

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2435

Cir. Ct. No. 2014TR8659

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF ROCK,

PLAINTIFF-RESPONDENT,

V.

FRIEDO L. HILLMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
RICHARD T. WERNER, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Following a bench trial, the Rock County Circuit Court convicted Friedo Hillman of speeding in violation of Rock County

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

ordinance 3.101.² On appeal, Hillman argues that the evidence presented at trial fails to support the circuit court's credibility finding. He also argues that the State acted improperly throughout the trial. We disagree and for the reasons that follow, we affirm the circuit court.

BACKGROUND

¶2 Rock County Sheriff's Deputy Mike Stalker issued Hillman a citation for traveling 82 m.p.h. in a 55 m.p.h. zone. Hillman plead not guilty and proceeded to a bench trial.

¶3 At the bench trial, Deputy Stalker testified that he utilized laser equipment to record the speed of Hillman's vehicle. He testified that he was in his squad car on an overpass when he pointed his laser at Hillman's license plate, recorded the speed, and that the vehicle passed under the underpass shortly thereafter.³ He lost sight of the vehicle as it passed beneath him, but he identified it immediately afterward and proceeded to pull Hillman over. He also testified that he observed other vehicles near Hillman's vehicle at the time he recorded the speed.

¶4 Hillman testified that he could not have been going 82 m.p.h. because he had set his cruise control to approximately 60 m.p.h. He testified that an automated speed indicator along his route had registered that he was traveling 62 m.p.h. He also testified that he would not have been going 82 m.p.h. because

² Rock County ordinance 3.101 adopts WIS. STAT. § 346.57(4)(h).

³ Deputy Stalker first testified that he was stationed in the median, but after reviewing his report, he testified that he was actually on the overpass.

of the impact an excessive speeding violation would have on his commercial driver's license and his insurance rates. Hillman also indicated that prior to being stopped by Deputy Stalker, a red truck, similar to his red truck, had been rapidly approaching him from behind, but that the driver of that vehicle hit the brakes and decelerated rapidly just before reaching the overpass.

¶5 Hillman's attorney presented a closing statement to the court in which he argued that Deputy Stalker had misidentified Hillman's vehicle as the speeding vehicle. The State asserted that Deputy Stalker correctly identified the speeding vehicle and that the Deputy's testimony was the more credible testimony.

¶6 The circuit court issued its findings from the bench. It found Deputy Stalker's testimony to be more credible. The court concluded that the laser equipment was in working order and that Deputy Stalker had pointed the laser at Hillman's vehicle when the speed was recorded. Accordingly, the court found Hillman guilty.

DISCUSSION

1. Credibility Determination

¶7 Hillman argues that the circuit court's finding that Deputy Stalker was the more credible witness is not supported by the testimony presented at trial.

¶8 On appeal, we uphold the factual findings of the circuit court unless they are clearly erroneous. *Phelps v. Physicians Ins. Co. of Wis.*, 2009 WI 74, ¶34, 319 Wis. 2d 1, 768 N.W.2d 615. In addition, in nonjury trials the circuit court must determine the credibility of witnesses. *Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977). "[W]hen more than one reasonable

inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.” *Id.*

¶9 At trial, Hillman’s theory of defense was that Deputy Stalker misidentified the speeding vehicle. The circuit court heard conflicting testimony from Deputy Stalker and Hillman. Deputy Stalker testified that he identified the vehicle, obtained its speed using his laser, and then re-identified the vehicle as it emerged from the underpass before pulling Hillman over. Both Deputy Stalker and Hillman testified that other vehicles were traveling near the speeding vehicle. Hillman testified that he was not speeding, but that a similar vehicle traveling near him was speeding.

¶10 The court heard the conflicting testimony and determined that Deputy Stalker was more credible than Hillman. After reviewing the testimony of both witnesses, we are satisfied that the circuit court’s findings of fact are not clearly erroneous. Furthermore, we will not upset the court’s credibility determination. The circuit court was in the best position to determine the credibility of the witnesses and we see nothing inherently unreasonable about the court’s determination. Furthermore, even if we were to assume that another reasonable inference could be made regarding the credibility of the witnesses, our case law requires us to uphold the circuit court’s credibility determination.⁴

⁴ Hillman argues that Deputy Stalker could not have pointed his laser at his truck’s license plate as the Deputy described because his truck does not have a front license plate. Hillman’s reply brief includes a photograph of a truck without a front license plate. This argument and photographic evidence was not presented to the circuit court and it is not appropriate for this court to take judicial notice of such a fact. *See* WIS. STAT. § 902.01(2) (explaining that for a fact to be judicially noticed it must either be a generally known fact or subject to verification by readably available and unquestionably accurate sources).

2. Prosecutorial Misconduct

¶11 Hillman also appears to argue that the State misrepresented evidence to the court at various points throughout the trial. As we understand it, he argues that the State distorted Hillman's testimony when it cross-examined him and that it also misconstrued the evidence during its closing statement.

¶12 After review of the trial transcript, we see no indication of misconduct and no misrepresentation of the evidence to the court. Instead, the transcript reflects two adversaries, the State and Hillman, each presenting their position to the circuit court. Furthermore, there is no indication that the circuit court was confused by the evidence presented in anyway whatsoever.

¶13 For the reasons stated, we affirm the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

